legal advice for themselves and people they know. If you are serious about expanding your client base, then you have to be serious about being seen. This does not necessarily mean "networking" events where everyone is looking for clients, as I find these to be some of the least effective ways to find clients (since the folks attending these events are mainly sellers of services and not looking to buy yours).

In my experience, one of the best ways to meet clients is by volunteering. Do something you enjoy and get to know people without having to openly market yourself. It is an opportunity for you to put your passion and character on display while doing something you believe in, which will attract potential clients. Not only will the experience be personally rewarding, it will also open all kinds of professional doors for you. Once you have built a client base through networking and volunteering, your caseload is bound to increase, since each client can refer to you perhaps dozens of future clients. So be sure to treat each client like gold, as he just may be that valuable during your potential client search.

Fee Agreements. While not required in every case, you should almost always have a written fee agreement, with money paid up front — whether by a flat fee or hourly with an advance retainer that will be placed in your trust account. For trust-account setup, you can check with the WSBA for approved banks. Contact Pete Roberts and the WSBA's Law Office Management Assistance Program for tips and tools when setting up the IOLTA trust account (as well as other great law practice management tools). WSBA has also created a publication on IOLTA accounts, which can be found at www.wsba.org/media/publications/pamphlets/managing.htm. Failing to have a written fee agreement that makes sense and mismanaging client money are two of the most dangerous pitfalls encountered during the practice of law. Making an effort on the front end to avoid these hazards will be time and money well spent.

Doing the Work/Substantive Knowledge. Now that you have clients coming in the door, how do you actually go about doing the work? While there is no substitute for experience, preparation is a pretty good alternative. On the preparation front, two of the best sources I have encountered for obtaining a substantive base of knowledge are the *Lawyer's Deskbook* and CLE materials available at the law library. While pricey, the *Lawyer's Deskbook,* by Dana Shilling ($195), covers nearly every existing substantive area of practice. If you can actually read it cover to cover, you will find that you have become an extraordinary issue spotter. With respect to the CLE materials, someone, at some time, has written about almost every substantive and procedural area of the law, quite often for the purpose of presenting at a legal seminar. CLE materials at the library are free and often right on point. They are the best way to familiarize yourself with an area of law.

As for research materials: sure, we are all hooked on Westlaw or Lexis, but these legal research services are very expensive. This is why Casemaker, the free legal database for WSBA members, has turned out to be such a blessing. Though perhaps a little difficult (or even deficient) in indicating which cases have been overturned or questioned, Casemaker is a great resource for Washington primary law and for a host of other jurisdictions. With Casemaker, you will discover that you can actually practice law without using one of the big two online legal research providers. ◊

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Off the Record

Direct Examination: Lawyer as Director

by Maureen A. Howard

A trial lawyer presenting her case in chief through direct examination is somewhat like a film director: the lawyer thoroughly analyzes the case and develops a plan for the most effective way to present the case to the jury to best advance her theme and theory. Just as no script would play out on film the exact same way in the hands of different directors, no case would be presented in exactly the same way by different trial lawyers. Yet there are constants to be found in the steps effective trial lawyers take during their case in chief when presenting their evidence through direct examination.

The Witness Is the Star, Not the Lawyer. With the exception of actor/directors (e.g., Woody Allen, Clint Eastwood, Mel Gibson) or those who fancy cameo appearances (e.g., Alfred Hitchcock, Spike Lee, Martin Scorsese), most directors operate behind the scenes. So, too, on direct examination, effective trial lawyers relinquish the spotlight and let the witness take the lead role. One way to do this is for the lawyer (in state court) to position himself back near the corner of the jury box, which forces the witness to talk "to" the jurors when answering questions on direct exam. Another way is to allow the witness to tell her story, not to merely confirm the lawyer's recitation of it. This means that even when good trial lawyers know they can get away with leading questions on direct exam, they don't do it. It takes more effort to craft a direct examination using the non-leading questions, "Who . . . ?" "What . . . ?" "Where . . . ?" "Why…?" "Explain…" "Describe…" or "Tell me about…," but the benefit is that the jury hears the witness tell the story in her own words, boosting credibility.

The Witness Does Not Testify in a Void. Few films have characters who appear in critical scenes before allowing the audience to get a sense of who the character is vis-à-vis the overall story. Likewise, good trial lawyers allow the jurors to learn who the witness is in relation to the case before eliciting critical testimony. This is separate and distinct from eliciting background information about the witness. While background information is useful for a number of reasons (building witness rapport with the jurors, relaxing the witness, building witness credibility, qualifying an expert, etc.), jurors are best able to process the significance of the background information — and the rest of the testimony — if they first understand where this witness "fits" in the case. The jury has already been read a short statement of the case by the judge, been exposed to case issues through voir dire, and heard opening statements. As each witness takes the stand, the jury asks themselves: Who is this person in relation to the case? One way to answer this is to ask the witness directly at the beginning of the direct examination:

> Q: Mr. Jones, are you familiar with the plaintiff, Margaret Smith?
> A: Yes. She was my secretary at the time of the fire and she was with me in the office lunchroom when the firefighters arrived.
> Q: All right, I'm going to come back and ask you some more questions about that in a bit, but first I'd like to talk to you a little about your background.

The Witness Is Not the Director. Although a director does not speak the lines, neither does she hand the script wholesale over to the actor. A director plans for and controls the pace and delivery of the story through control of the dialogue. So, too, effective trial lawyers thoughtfully plan for direct examination, always with an eye toward supporting the theme and theory of the case. Even if a witness is allowed to give narrative testimony to the jury, it may erupt as a rambling, unorganized account that includes too many unnecessary details and too few critical ones. One way a lawyer maintains control on direct examination without asking leading questions is by using headlines and transitions.These directional statements alert both the witness and the jury to where the testimony is headed. Usually, a headline statement refers back to early testimony, intentionally only touched on briefly, now to be revisited in more detail. Examples include: "I'd like to now talk about what happened at the partner's meeting in July," "Let's talk about what happened after you arrived home from the hospital," or "I'd like to talk a little bit now about your financial situation today."

The overall organization of the exam also controls the flow of information to the jury. On direct examination, a chronological approach is frequently the most persuasive, because it is easily understood by the jurors — who are receiving the information aurally for the very first time. Americans are accustomed to receiving information primarily through visual media. Thus, effective trial lawyers look for ways to incorporate visuals into direct examination, using demonstrations, exhibits, or demonstrative aids. The use of visuals accomplishes more than keeping the jury's attention (which is no small feat) — it actually helps jurors receive, store, and retrieve information.

Witness Preparation Is Key. Just as directors understand the importance of rehearsing a scene before shooting film, effective trial lawyers understand the importance of thorough witness preparation—including a run-thorough of direct examination. Ethical witness preparation allows the lawyer to work with the witness to help the witness understand how her testimony furthers the themes and theory of the case. The lawyer can use witness preparation to practice the pace of the direct examination, educate the witness on the goals of the different sections of the examination, and advise the witness about how much detail to share at various intervals as the testimony unfolds.

Information can be elicited from the witness in either large or small pieces. At times, the lawyer wants the jury to hear only a global answer to a question, to be revisited in more detail later. At other times, the lawyer determines that greater detail is needed to build witness credibility and maximize persuasion. The lawyer can slow the pace of the examination and increase detail by asking a series of incremental questions. For example, instead of the general question "What did the man look like?" the lawyer might ask a series of open-ended questions, such as: "How tall was he?" "How heavy was he?" "What color was his hair?" This technique of asking incremental questions can also create the illusion of lengthening time in the minds of the jurors when used to talk about events. Social-science research confirms that there is a correlation between the amount of time spent talking about an event during testimony and jurors' perception of the duration of the event — the longer the jurors hear about the event, the longer they perceive the event to have been.

Trial lawyers do not create the story, but methodical organization and preparation can vastly influence how that story is told to, and perceived by, the jury. ◊

"Off the Record" is a regular column on various aspects of trial practice by Professor Maureen Howard, director of trial advocacy at the University of Washington School of Law. She can be contacted at mahoward@u.washington.edu. Visit her webpage at www.law.washington.edu/Directory/Profile.aspx?ID=110.

Federal Judges Provide Guidance to King County Young Lawyers

by Ben Nivison

In January, during an event organized and sponsored by the King County Bar Association's Young Lawyers Division, four federal judges from the Western District of Washington gave young lawyers frank advice about how to succeed in and outside of federal court. Judges John Coughenour, Richard Jones, and Ricardo Martinez served as panelists, and were introduced by the Honorable Robert Lasnik, chief judge of the Western District. The distinguished panel supplied practice tips to an audience of mostly newer attorneys at the federal courthouse in Seattle.

Judge Coughenour focused on what young lawyers can do to hone their courtroom skills. He reminded those in attendance that "trial lawyers try cases." Acknowledging that trials are becoming more and more infrequent, Judge Coughenour offered several suggestions about how aspiring trial lawyers can get into court. First, he emphasized that pro bono work provides a great opportunity for young lawyers to assume significant case responsibilities. He mentioned the Federal Bar Association's pro bono panel as a good place for a young lawyer to help real clients resolve significant legal issues while obtaining valuable courtroom experience.

Second, Judge Coughenour recommended that junior practitioners notify their colleagues that they would like to try cases. A stated willingness to do the difficult, in-depth work on cases can help a young lawyer get into a courtroom sooner, said the judge. Along those same lines, he also suggested